

REMARKS:

Claims 15-35 are in the case and presented for consideration.

Claims 1-14 have been canceled without prejudice to Applicant's right to pursue patent protection for the canceled subject matter.

Support for new claims 15-28 come from the original set of claims 1-7, now cancelled.

Support for new claims 29-35 come from the original set of claims 1-7, now cancelled and from the specification as follows:

For claim 29, support may also be found on page 1, lines 3-10; page 3, lines 24-28; page 4, lines 1-9, page 5, lines 1-13 and Fig 1.

For claim 30, support may be also be found on page 5, lines 14-29, page 6, lines 1-28, page 7, lines 1-5 and Fig. 1.

For claim 31, support may also be found on page 1, lines 9-10.

For claim 32, support may also be found on page 1, lines 9-10.

For claim 33, support may also be found on page 6, lines 3-10.

For claim 34, support may also be found on page 4, lines 4-9.

For claim 35, support may specifically found in the original claim 7, now canceled, and also on page 1, lines 3-10; page 3, lines 24-28; page 4, lines 1-9, page 5, lines 1-13 and Fig 1.

Rejection under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 8-14 under 35 U.S.C. § 112, first paragraph for failing to comply with the written description requirement. The reasons for this rejection are found on pages 2 and 3 of the Final Office Action dated September 7, 2007 (Office Action).

The Applicant clarifies that claims 8-14 were added as new claims in the Applicant's response to the second office action dated February 5, 2007, said claims subsuming the limitations of claims 1-7 originally filed but subsequently canceled by the same response. For instance, claim 9 items "c" and "d" contain subject matter disclosed in the original claims (i.e., claim 3 - letters "e" - "f" and "g") and was, therefore, duly regular. The same positioning is valid for claim 10, which was supported through the disclosure of original claim 3. As such, the Applicant respectfully disagrees that the language of claims 8 and 9 was not supported by the original disclosure. However, rather than traverse the rejection, the Applicant has added, by way of amendment for the purposes of clarity, a new set of claims 15-35, the support for which is pointed out with particularity above.

In light of the cancellation of claims 8-14, the rejection is believed to be moot. The Applicant, therefore, respectfully requests that the Examiner withdraw his rejection under 35 U.S.C. 112, first paragraph.

Rejection under 35 U.S.C. § 102

The Examiner has impliedly rejected claim 8 under 35 U.S.C. 102(b) as being anticipated by German Patent No. DE19646813 to Hnatek (Hnatek) by way of reference to his rejection of claim 1 in the office action dated February 5, 2007. For the purpose of being fully responsive to this Office Action, the Applicant hereby assumes that the grounds for the rejection of claim 8 are the same as that of claim 1, now canceled.

Claim 8, according to original claim 1 had been rejected in view of Hnatek, because the reference allegedly discloses a method to obtain a food product of the meat type that could be consumed immediately or be prepared later, which is provided with a marking that, using a laser, will inherently provide an engraving (although the claim recites marking or engraving), the laser of which is a calorie producing equipment, and where the marking is done on the external surface of the food product, revealing the employment of a computer to make the marking. According to the analysis of the Examiner, the Hnatek patent would inherently used a PLC which would have been previously programmed according to the type of food product and according to the type of meat, with the resulting marking being recognized visually with the naked eye when exhibited for consumption. The Applicant respectfully disagrees.

As revealed in the technical solution of the Hnatek patent (DE 196 46 813 A1), this priority "limits" its field of "novelty" to "provide conditions for food products already prepared to be provided with graphic motives and individual figures through a laser marking or engraving system". It uses a "vector program - scanning system" for the capture of structures of different images, including the function of "editing and relief", with an HP Jet PA-4 Scanner, 300-1200 dpi, with a capturing program". In the scale of "Production Efficiency and Productivity", is the fast processing of all operations (indications and calculations), numerous automated functions, optimization of the laser printer head travel, with "research" of the shortest way from one form to the next. The "execution control electronic unit" described in item "automation" aims at allowing the "position change of the laser printer head". The same "program control unit" effects the "evaluation of data storage means, as well as the corresponding excitation of the position of the laser printer head, which, for this "purpose", can be mounted together with feeding device on support slide of the tool-holder type, as in machine-tools, in the form of a cross slide used in lathes." The parts of the slide are driven respectively by a "pitch motor".

The execution of the process described in the Hnatek reference occurs for "the laser engraving procedures for the generation of figure motives and text written in ready products in the Industry of Food Products (Products based on meat, fish, pasta and sweets) and carried out by means of light engraving, text motives and changeable figures, through a special industrial laser of carbon dioxide (CO₂)".

Comparing the "technical functions in the Hnatek patent in relation to subject matter

of the present application it is clear that each propose different technical solutions for diverse technical problems. As such, it is **not** inherent in Hnatek to use the PLC as recited in claim 8, now canceled but subsumed in claims 15 and 29.

While the Hnatek patent is constituted by independent equipment units, which require an interface to make its functions work, specifically: a carbon-dioxide industrial Laser (CO2) type 50; a laser engraving head; a specific software to scan with graphic editing functions; an AT computer; system documentation - instruction manual for the software use and maintenance; supply cabinet containing laser head; engraving head; electronic equipment; safety; end switch; sorting system; cooling performance system; resounder and feeding unit, the present application features a PLC (programmable logic controller) which centralizes the functions of identifying the meat body, its features, electronically and remotely programming the marking or engraving, depending on the type of meat.

The various disclosed embodiments of the Applicant's invention do not use any scanning system, HP printers or any other, AT computer or similar cooling system and other separate systems and technical items disclosed in Hnatek. Therefore, it is clear that the "technical nature of the invention" proposed by the Applicant is "different" from that disclosed by Hnatek. In light of this fact, the Applicant argues that the provisions 35 U.S.C. 101 relating to "inventive activity" should not be disregarded, particularly in relation to the criterion of "new and useful process". With the technologies applied by both patents being "different", this cannot imply the obviousness of the matter. In support of **both** novelty and

nonobviousness is the fact that present application also has as one of its technical solutions the "alternation" of the application of the "marking or engraving" in view of the factors that constitute the meat body, which varies according to its "type and features". The body of fish meat, for example, has a completely different consistency than the bovine meat, in view of its "consistency, firmness, malleability, quantity of strings and fibers, fat plates", thus needing a different procedure application. This need to alternate application of engraving and marking technologies depending on food product type and requirements is enabled by the centralized PLC, and results in obtaining a food article for immediate consumption or later preparation, provided with marking or engraving carried out on the external surface of the food article and food article with marked surface. As this function of the PLC is unique to the present application it use is not inherent in Hnatek reference and is therefore not anticipated by Hnatek.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See, e.g., Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and MPEP 2131. This standard is not satisfied where the prior art reference merely discloses the "concept", "essence", "key" or "gist" of the patented invention "concepts do not anticipate". Panduit Corp. v. Dennison Mfg. Co., 774 F.2d 1082, 1101 (Fed. Cir. 1985). To constitute anticipation, all the claimed elements must be found in exactly the same situation and united in the same way to perform the identical function in a single unit of prior art. General Elect. Co. v. Nintendo Co., Ltd., 179 F.3d 1350 (Fed. Cir. 1999).

For the reasons stated above, the Applicant respectfully submits that the PLC is not inherently found in the Hnatek reference, nor is it expressly or impliedly disclosed. The claimed element of PLC is not found in exactly the same situation and united in the same way to perform the identical function in any single unit described in the cited reference. As such, neither claim 8, now canceled, nor new claims 15 and 29 which subsume the limitations of claim 8, are anticipated by the Hnatek reference.

Claims 16-28 and 30 and 32 depend from claim 15 and are allowable for at least the same reasons give for the patentability of claim 15. Claims 31, and 33-35 depend from claim 29 and are allowable for at least the same reasons given for the patentability of claim 29. Therefore, allowance of all claims 15-35 is, therefore, respectfully requested.

Rejection under 35 U.S.C. 103(a)

The Examiner has rejected claims 9-14 under 35 U.S.C. 103(a) as being unpatentable over Applicant's admission of prior art in view of German Patent No. DE19646813 to Hnatek (Hnatek), further in view of Drouillard et al. ('747), Billyon et al. ('DE'821), Tanio et al. (JP'692), Eger (DE'360), Hnatek (DE'379), Luigi(EP'154), Softech (JP'390), Leu Anlagenbau (CH'393), Van Wyk et al ('621) and Bowling ('535).

The Examiner alleges that the "admission of the applicant of previous art reveals additionally that it was conventional to provide markings in the package of the food or in

"seals", fixed directly to the food product, and further points to Hnatek in support of his argument that it was notoriously conventional to provide markings directly on the food product. The Examiner also argues that limitations of claim 9-14 are obvious in view of patents Hnatek (813), Drouillard (747), Billyon (DE 821), Tanio (JP 692), Eger (DE 360), Hnatek (DE 379), Luigi (EP 154), Softech (JP 390), Leu Anlagenbau (CH 303), Van Wyk (621) e Bowling (535). The Examiner alleges that these references have additional evidence that it was notoriously conventional to mark all types of food products, including meat products with logotypes, information about the product, etc and employ several conventional marking systems such as lasers and marking elements. Based on his findings, the Examiner found that to modify the admission of the applicant of the previous art and substitute a conventional expedient to provide markings by another conventional expedient to provide markings, would have been obvious. The Applicant respectfully disagrees.

The above-mentioned patents, each on its scope and limitation of technical character, have diverse "solutions" each which stand in sharp contrast with the subject matter of the present Application. None of the cited references has the alternation of state of the meat body (meat features) as well as alternation of the process to be applied, that is, marking or engraving. It is important to point out that such processes are different, especially in view of their concepts, with marking limiting itself to the application of a code over the external surface, while the technical proposal of the engraving consists of the sculpting the meat body to preserve the originality and the safety of the marking process now realized. Also, the mere citation of a determined term in a patent report is no evidence

of its application, if it is not described. Thus, the mentioned priorities are not constituted of the technical elements and solutions originally presented by the Applicant.

Analyzing the claims of all references cited by the Examiner, it is noted that none revealed previously their description and technical content, and cannot be compared and recognized as obvious in relation to the Applicant's patent, considering that the inventive activity, legal technical criterion, was not recognized as general character previously described in the respective priorities. **Similarly**, the Examiner has **not** met his *prima facie* burden of showing obviousness by failing to point out with specificity how the cited references may be combined or modified to render the present claims unpatentably obvious or the rationale for modifying or combining cited references in a way that would have been obvious to one reasonably skilled in the art.

In determining the differences between the prior art and the claims, the question under 35 U.S.C. §103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1742, 82 USPQ2d 1385, 1397 (2007). Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole" as does disregarding the limitations of an application. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469

U.S. 851 (1984). The examiner has not shown how the cited references combine to render the present application obvious, has failed to analyze the subject matter as a whole in making comparisons and has only arguably shown that some of the elements of the present claims are found scattered throughout.

The mentioned priority DE 3836821 (Billyon), discloses the application of an identification through "thermal treatment". Patent DE 19851379 (Hnatek), on the other hand, eliminates any control by central system and also laser application. Patent JP 2001301390 features an "electric device" for the application of marks on food products, containing tubular heaters, consisting of a procedure completely different from that proposed in the Applicant's patent. Thus, as all the others, each on its technical scope of activity, however, all diverge from each other.

To establish a *prima facie* case of obviousness, the Examiner should demonstrate some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference as he has suggested. He should also show that his suggested modification of the prior art was reasonably expected to succeed, and that the prior art reference teaches or suggests all of the claim limitations. See, e.g., *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986); *KSR Int'l Co. v. Teleflex, Inc.* 127 S.Ct. 1727 (2007)("There is no necessary inconsistency between the idea underlying the TSM test and the Graham analysis"). If the proposed modification or combination of the prior

art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). When the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1742, 82 USPQ2d 1385, 1397 (2007).

The references the Examiner has cited, teach away from the present application and are to be combined in a way, as suggested by the Examiner, that is contrary to their principle of operation or would render them, otherwise, non-functional. As such, the combinations and modifications of the references cited by the Examiner would not have been obvious to one ordinarily skilled in the art.

For the above state reasons in support of the novelty of claim 9, now canceled, and of new claim 20 which subsumes the limitations of claim 9, the Applicant respectfully suggest that the claim as currently presented recites novel and nonobvious subject matter and is, therefore, patentable.

Claims 21-27 and 30 depend from claim 20 and are allowable for at least the same reasons give for the patentability of claim 20. Therefore, allowance of all claims 20-27 and 30 is respectfully requested. The reasons argued by the Applicant in support of claims 9, 20-27 and 30 are equally valid for claims 29, and 31-35 and allowance for these claims is also respectfully requested for the same reasons.

Thus analyzing the technical content of each one of the mentioned patents, in the set of legal presuppositions inherent to the patent activity, which are, novelty + inventive activity + industrial application, which aim at allowing technological improvement in a field already explored, it is confirmed that the technical solution and affinity of each one of the mentioned patents do not coincide with technical features of the Applicant, resulting in non-obviousness in the materialness of present application

Accordingly, the application and claims are believed to be in condition for allowance, and favorable action is respectfully requested. No new matter has been added.

If any issues remain which may be resolved by telephonic communication, the Examiner is respectfully invited to contact the undersigned at the number below, if such will advance the application to allowance.

Favorable action is respectfully requested.

Respectfully submitted,

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